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Attorneys for Defendant MICHAEL L. PHILPOT

**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

NORTH AMERICAN COMPANY FOR LIFE )  
 AND HEALTH INSURANCE, )

Plaintiff, )

v. )

MICHAEL L. PHILPOT, an individual, )  
 VIRGINIA B. HIRSCH, an individual, JOHN )  
 B. KUYKENDALL, an individual, RENE )  
 ALEJANDRO LACAPE, an individual C. )  
 RICHIE MCNAMEE, an individual and )  
 HECTOR PAEZ VALDEZ, an individual )

Defendants. )

Case No. 08 CV 0270 BEN NLS

**NOTICE OF MOTION TO DISMISS  
 FOR FAILURE TO STATE A CLAIM  
 [F.R.C.P. 12(B)(6)] OR,  
 ALTERNATIVELY, MOTION FOR A  
 MORE DEFINITE STATEMENT  
 [F.R.C.P. 12(E)]**

(Filed concurrently with Motion to  
 Dismiss; Declaration of Michael J. Sachs  
 and Request For Judicial Notice)

Date: July 21, 2008  
 Time: 10:00 a.m.  
 Crtrm: 3

Complaint Filed: February 13, 2008  
 Trial Date: None Set

TO PLAINTIFF AND ITS ATTORNEYS OF RECORD HEREIN:

PLEASE TAKE NOTICE that on July 21, 2008 at 10:00 a.m., or as soon thereafter as  
 counsel can be heard, Defendant, Michael L. Philpot will move the above entitled Court,  
 located at 880 Front Street, San Diego, CA 92101-8900, for an order dismissing the  
 Complaint or, in the alternative, requiring Plaintiff to provide a more definite statement in its  
 Complaint. This Motion is brought pursuant to *Federal Rules of Civil Procedure* ("F.R.C.P.")  
 12(b)(6) and 12(e), and will be made on the following grounds:

1           1.     The First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and Ninth  
 2 Causes of Action, all of which are based directly on alleged illegal scheme of “advancing  
 3 premium payments or paying secret rebates” fail to state a claim upon which relief can be  
 4 granted in that they do not allege sufficient facts to establish wrongful conduct since there is  
 5 no prohibition in the State of California with regard to advancing premium payments or  
 6 rebating. Further, Plaintiff’s Third Cause of Action for Breach of the Covenant of Good Faith  
 7 and Fair Dealing fails to state a tort claim. Lastly, Plaintiff has admitted it has suffered no  
 8 damages.

9           2.     In the alternative, Plaintiff should be required to provide a more definite  
 10 statement in its Complaint pursuant to F.R.C.P. 12(e).

11           This Motion is be based on this Notice of Motion and Motion, the Memorandum of  
 12 Points and Authorities filed herewith, the Request for Judicial Notice, the Declaration of  
 13 Michael J. Sachs and attached exhibits filed herewith, the pleadings and papers filed herein,  
 14 and upon such oral argument as may be presented at the hearing on this Motion.

15  
 16 Dated: June 13, 2008

Respectfully Submitted,

**CALLAHAN & BLAINE, APLC**

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 19 By: s/Michael J. Sachs

20           Michael J. Sachs  
 Attorneys for Defendant, MICHAEL L. PHILPOT  
 21 email: michael@callahan-law.com

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 23 G:\2895\2895-02\Pleadings\Ntc of Motion.wpd  
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**PROOF OF SERVICE**

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. I am employed in the office of a member of the bar of this Court at whose direction service was made. My business address is Callahan & Blaine, APLC, 3 Hutton Centre, Ninth Floor, Santa Ana, California 92707.

On June 13, 2008, I electronically filed the following document with the Clerk of the Court using the CM/ECF system, which sent electronic notification of such filing to all other parties appearing on the docket sheet as listed below.

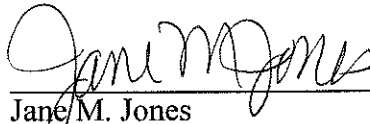
**NOTICE OF MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM  
[F.R.C.P. 12(B)(6)] OR, ALTERNATIVELY, MOTION FOR A MORE DEFINITE  
STATEMENT [F.R.C.P. 12(E)]**

Miles Michael Cooley mcooley@reedsmith.com

Raymond A. Greenberg raylaw43@msn.com

M. Andrew Schneider aschneider@tahlaw.com

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 13, 2008 at Santa Ana, California.

  
\_\_\_\_\_  
Jane M. Jones  
email: jjones@callahan-law.com

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